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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,164	08/01/2003	Anthony G. Micele JR.	J-3782	1885
28165	7590	07/26/2005		EXAMINER
S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236				TON, ANABEL
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/632,164	MICELE ET AL.	
	Examiner Anabel M. Ton	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-8,10,12-14,16,17 and 21-26 is/are rejected.
- 7) Claim(s) 2,3,9,11,15,18-20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. The declaration under 37 CFR 1.132 filed 05/10/05 is insufficient to overcome the rejection of claims 1,4-8,10,12-14,16,17,21-26 based upon the 103 rejection made under Carpenter in further view of Exhibit 13 as set forth in the last Office action because: of the following statements below.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,4-8, 10, 12-14, 16, 17, 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carpenter and further in view of Exhibit 13 (as submitted by applicant).

- Carpenter discloses the claimed invention except for the recitation of the outer surface of the candleholder having a hammered texture. Carpenter discloses a decorated luminary product comprising: a candle; a candle holder containing said candle, said candle holder having an inner surface and an outer surface; and a web of a heat shrunk polymer encasing the outer surface of said candle holder, said web including a decorative feature, and the heat shrunk polymer with augment any surface features (e.g. Fillets, flutes or the like) of a candle holder. (col. 9 lines 8-16), the decorative feature of said web is located so as to

cooperate with light emitted by said candle in said candle holder to augment a visual effect when said candle is lit, a candle holder selected from the group consisting of chimneys, globes and jars, containing said candle, and a web of a heat shrunk polymer encasing said candle holder, said web including a decorative feature, a combustible material, a glass jar containing said combustible material, said combustible material having been poured into said glass jar, said glass jar having an inner surface and an outer surface; and a wick extending through said combustible material (abstract, col. 10 lines 46-65, col. 9 lines 59-67.

4. Exhibit 13 as presented by applicant discloses a candleholder with a hammered texture on the outside surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the candle holder with a hammered texture on the outside surface in combination with a decorative film on the outside surface since Carpenter teaches the benefits of heat shrinkable decorative film on the outer surface of a candle holder to further enhance the decorative effect of the candle holder and light emitted therefrom by the candle and to combine this heat shrinkable material with a hammered textured surface of a candle holder would only further provide additional decorative lighting effects.

- Said candle comprises a plurality of colors; (Carpenter);
- Said candle includes an active material, (Carpenter);
- Said active material is selected from the group consisting of fragrances, air fresheners, deodorizers, odor eliminators, malodor counteract ants, insecticides,

insect repellants, medicinal substances, disinfectants, sanitizers, mood enhancers and aroma-therapy compositions, (Carpenter)(col. 7 lines 21-61);

- The decorative feature of said web includes one of a thermo chromatic ink and a phosphorescent ink; (Carpenter);
- The web is applied onto said candleholder such that wrinkles and bubbles are formed in said web. (Carpenter).

***Allowable Subject Matter***

5. Claims 2,3,9,11,15,18-20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: The prior art cited of record does not teach alone or in combination: the inner surface of the candle holder having a hammered texture, the hammered texture causes differing refraction of light emitted from the candle when lit, the web exhibits birefringence, light emanating from the flame is refracted by at least a portion of the glass jar extending between the top surface of the combustible material and the upper rim.

***Response to Arguments***

7. Applicant's arguments filed 05/10/05 have been fully considered but they are not persuasive for the following reasons.
8. In response to applicant's argument that Carpenter does not teach a structural combination of the instant invention, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).
9. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, since both references teach the aesthetic benefits of additional decorative features to a candle holder (hammering or decorative wrap), implementing the teaching of Carpenter's heat shrinkable material that will augment "any surface feature" of a candle holder to the exterior hammered textured surface of Exhibit 13 for the motivation of providing a candle holder with an already decorative texture with an additional decorative feature would be desirable for an aesthetically pleasing illuminated structure. The recitation "to augment a visual effect" as recited by applicant does not necessarily include specifically changing the function of the device to include an unexpected optically enhanced light emission, but only suggests that this "visual effect" is decorative in nature.

11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the candle holder having a hammered texture on an inner surface and outer surface) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant

recites in independent claims 1,10 and 17 "wherein *at least one* of the inner and the outer surface of said candle holder has a hammered texture". This recitation does not include both the inner and outer surfaces being hammered but "at least one of". Exhibit 13 anticipates "at least one" surface, the outer surface, having a hammered texture.

**Conclusion**

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anabel M. Ton whose telephone number is (571) 272-2382. The examiner can normally be reached on 08:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anabel M Ton  
Examiner  
Art Unit 2875

AMT

  
Stephen Husar  
Primary Examiner